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Federal Communications Commission
Office of the Secretary

BEFORE THE

Federal Communications Commission

In the Matter of
THE TELEPHONE CONSUMER
PROTECTION ACT OF 1991

CC Docket No. 92-90

COMMENTS OF ITI MARKETING SERVICES, INC.

ITI Marketing Services, Inc. (ITI) submits these comments in response to the Commission's proposals for implementation of the Telephone Consumer Protection Act of 1991 (TCPA). As one of the largest (if not the largest) telephone marketing service agencies in the United States, ITI plainly has a vital stake in the outcome of this proceeding.^{1/} ITI's extensive experience in the field of telephone marketing provides it with a special insight into the practical implications of the regulatory options under consideration. We therefore comment briefly to show why, as a practical matter, adoption of rules requiring company-specific, in-house do-not-call programs is the only rational and fair outcome. In support, the following is stated:

1. Founded in 1986, ITI has grown to be a full-service telephone marketing agency of more than 3,000 employees. The company is headquartered in Omaha, Nebraska, and also maintains facilities in Florida, Ohio, Kansas and South Dakota. The company

^{1/} ITI is an active member of the Direct Marketing Association, and it endorses the position taken by the DMA in this proceeding.

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provides both "in-bound" (e.g., 800) and "out-bound" telephone marketing. As a matter of policy, we do not provide automatic pre-recorded message services.^{2/} In its out-bound services, ITI serves as an agent for a broad range of businesses and nonprofit organizations that have found telephone marketing to be an effective and efficient means of making the American public aware of a myriad of products and services. Our clients come from a diverse group of industries including information service providers, financial service providers, credit card and insurance services, consumer shopping services, magazine publishers, broadcast computer services and others. During certain seasons of the year, ITI may have between two and 3,000 service representatives ("TSRs") engaged in the marketing of the products and services of these companies. In such periods, it may place as many as 100,000 calls a day.

2. ITI has long maintained an internal do-not-call policy. Our policy is in writing. It is provided to all TSRs who are trained in its use. The policy requires the TSR to record the name, address and telephone number of do-not-call me responses. We retain the names of consumers who do not wish to receive calls with respect to a client's services or products indefinitely. In accordance with the DMA's guidelines, these do-not-call lists are used for suppression purposes only; and it is our policy to provide

^{2/} These comments, therefore, focus exclusively upon the provisions of the TCPA that deal with "live operator" marketing. See, §227(c).

our clients with a list of consumers who have requested that they not be called with respect to that particular client's product or service.

3. In deciding this proceeding, the Commission is urged to keep firmly in mind competitive considerations. Ours is an intensely competitive business. We compete for clients, not only with other large and small telephone service agencies, but with other forms of direct marketing and with the mass media, including radio, television, newspapers and magazines. It is a fact of American life that some consumers find any form of advertising or sell annoying; however, there are no systems for regulation of annoyance in the mass media. In short, the Commission should not unnecessarily alter competitive balances in its implementation of the TCPA.

4. The Commission should also take account of the existence of marketplace and self-regulatory mechanisms which address (if they do not perfectly solve) the concerns underlying the TCPA. The distinguishing feature of the use of the telephone as an advertising or sales medium is that it provides a direct and immediate correlation between the promotional message and consumer response. In television advertising, for example, the success of a campaign is principally measured by the number of viewers who see the spot and only indirectly by sales. By contrast, the success of telephone marketing campaign is measured directly (and instantaneously) by the "pull" of the message -- the ratio of total

sales dollars to the total cost of the promotional campaign.

5. For that reason, business etiquette toward consumers and the economics of telephone marketing converge. Neither we nor our clients want to make calls to consumers who do not want to receive them. To do so diminishes the image of the client's product or service. At the same time, such unwanted calls drive up the cost of the telephone solicitation program in relation to dollar volume of goods or services sold. This is why ITI -- and many other responsible marketers -- voluntarily maintain in-house, do-not-call policies. It is also why ITI (and other major national marketers) subscribe to and use DMA's telephone preference service.

6. We submit that in evaluating the "regulatory options" under consideration, the Commission should place great emphasis upon the fact that there are natural marketplace forces and systems of self-regulation which independently further the purposes of the TCPA. We accept the need for a system of regulatory assurance and a means of enforcing such assurance so that businesses engaged in telephone solicitation do not annoy their customers or potential customers. Unfortunately, there are some marketers who have

declined to voluntarily address this problem.^{3/} Nonetheless, although market-clearing mechanisms and self-regulation need regulatory reinforcement, the basic integrity of the marketplace should plainly serve as the starting point for Commission analysis of the regulatory options before it.

7. The Notice of Proposed Rulemaking sets forth a number of "regulatory options." There are, in reality, only two: Either the Commission must choose some sort of database system administered by a third party;^{4/} or it must require all businesses and agencies engaged in telephone marketing to establish, maintain and operate company-specific (in-house), do-not-call systems. We believe that the mere statement of the options dictates the answer. Under the TCPA, the Commission is directed to select the "most effective and efficient" means of achieving the purposes of that statute. A regulatory framework based upon company-specific, in-house do-not-call requirements satisfies both tests.

^{3/} We suspect that this is far more prevalent among marketers who use automatic pre-recorded voice messages for telephone solicitation purposes than it is among companies, like ITI, that only engage in live operator calling. Also, small and local businesses -- particularly those that are infrequent users of telemarketing -- are less aware of the logic and economics of telephone marketing. This counsels that the system of regulation adopted by the Commission should be made applicable to all marketers, regardless of size and means (live operator or ADRMP) of telephone solicitation.

^{4/} As the DMA correctly points out, systems based upon network technologies or special directory markings are, at least in application to national marketers, database systems.

8. Company-specific, do-not-call rules are the most "efficient": because these rules would be self-administered by the marketer directly from the calling list, the ability to accurately identify the few consumers who do object to telephone marketing calls with respect to a particular product or service is greatly enhanced; problems of list matching, of input error and of updating are avoided. Thus, a regulatory framework based upon company-specific, do-not-call systems provides a high degree of assurance that the customers who do not wish to receive such calls will be respected, without impairing the interests of consumers who enjoy the ease and convenience of shopping by telephone.

9. A regulatory framework based upon company-specific, do-not-call programs is also "efficient." Certainly, the do-not-call program which ITI maintains and operates is not without cost. Those costs relate to training TSRs in the use of the system, the maintenance of internal do-not-call list hygiene, the matching of our internal list against calling lists and, indeed, the cost of acquiring TPS tapes. However, because the system is self-administered, the do-not-call program is integral to our overall cost of doing business and the added charges are incremental.

10. By contrast, any system based upon an external third party list would require businesses engaged in telephone marketing to incur costs that they cannot integrate with their normal business operation. In addition, the database administrator would not be subject to marketplace forces, and marketers would be

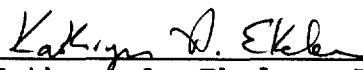
compelled to use the system even though they have no means of controlling its cost of administration. Lastly, to the extent that a national database system fails to operate efficiently and effectively, we would be required, in the interest of our clients and in order to maintain our competitive position, to continue to operate our in-house call system. A system of regulation that has the effect of requiring duplicate programs designed to achieve the same end cannot be characterized as "efficient."

11. For these reasons, ITI respectfully, but strenuously, maintains that the Commission should adopt a regulatory approach based upon company-specific, do-not-call requirements. Our experience in this field leaves us convinced that this is not only the best, but indeed the only, means of satisfying the purposes of the TCPA without impinging upon legitimate business practices and without needlessly burdening the economy.

Respectfully submitted

ITI MARKETING SERVICES, INC.

By


Kathryn A. Ekeler, Esq.
8712 W. Dodge Road
Suite 200
Omaha, NE 68114

Of Counsel:

Ian D. Volner, Esq.
Cohn and Marks
1333 New Hampshire Avenue, N.W.
Washington, DC 20036
202/452-4822

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